

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ALEKSANDAR KAVCIC,
Plaintiff,
v.
BROADCOM INC., et al.,
Defendants.

Case No. 20-cv-01246-JD

ORDER RE TRIAL

In the order denying summary judgment, the Court directed the parties to file a joint statement with respect to whether the trial should be by jury or the Court. Dkt. No. 146 at 3. In the joint statement, plaintiff Kavcic proposed a bench trial primarily on the grounds that he never requested a jury, and that defendant Broadcom filed its counterclaims for breach of contract in June 2020 without a jury trial demand and subsequently embraced a bench trial in all pertinent filings up to the summary judgment order. Dkt. No. 149 at 2. Broadcom forthrightly acknowledged these circumstances, and stated that it had not made a timely jury trial demand under Federal Rule of Civil Procedure 38. *Id.* at 3. Even so, Broadcom invited the Court to order a jury trial pursuant to Rule 39(b). *Id.*

As much as the Court would like to grant Broadcom's request, Rule 39(b) does not permit a jury trial in this case. There is no question that the Seventh Amendment and the fair and efficient administration of justice amply warrant a jury trial in light of Broadcom's damages demand and contract claims. But the Court's discretion here is "narrow," and Rule 39(b) "does not permit a court to grant relief when the failure to make a timely demand results from an oversight or inadvertence." *Pac. Fisheries Corp. v. HIH Cas. & Gen. Ins., Ltd.*, 239 F.3d 1000, 1002-03 (9th Cir. 2001) (internal citation and quotation marks omitted); *see also Zivkovic v.*

1 *Southern California Edison Co.*, 302 F.3d 1080, 1086-1087 (9th Cir. 2002) (same). Broadcom did
2 not demonstrate that the omission of a jury trial demand was the result of something other than
3 oversight or mistake. Consequently, the case will be tried by the Court.

4 The pretrial conference set for February 1, 2024, is vacated. A bench trial is set for
5 February 13-14, 2024, at 9:00a.m. Each side will have 4 hours of trial time, and up to an
6 additional 25 minutes per side for closing statements. The parties will file by January 29, 2024, a
7 joint pretrial statement that also contains the information requested by the Court in the summary
8 judgment order. *See* Dkt. No. 146 at 3.

9 **IT IS SO ORDERED.**

10 Dated: January 17, 2024

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JAMES DONATO
United States District Judge